

Amendment No. 1 to HB3169

Fitzhugh  
Signature of Sponsor

**AMEND Senate Bill No. 3135**

**House Bill No. 3169\***

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 41-21-903, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) Upon being developed, the form shall be submitted to each person who is an inmate as of the effective date of this act and to any person who thereafter is sentenced to imprisonment under the jurisdiction of the department. The form shall be periodically resubmitted to an inmate by the department for purposes of obtaining current information regarding assets of the inmate. The department shall establish through rule the frequency with which such form shall be resubmitted.

SECTION 2. Tennessee Code Annotated, Section 67-1-801(b)(1), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

When it is determined by administrative review that a person is entitled to a refund or credit of any tax collected or administered by the commissioner, and such person is not a debtor as defined in § 67-1-1808, interest shall be added to the amount of refund or credit due, beginning forty-five (45) days from the date the commissioner receives proper proof to verify that the refund or credit is due and payable. In the case of a taxpayer who is a debtor as defined in § 67-1-1808, when it is determined by administrative review that such taxpayer is entitled to a refund or credit of any tax collected or administered by the commissioner, interest shall be added to the amount of refund or credit due, beginning ninety (90) days from the date the commissioner receives proper proof to verify that the refund or credit is due and payable.

SECTION 3. Tennessee Code Annotated, Section 67-1-801(b)(2), is amended by adding the following as a new, appropriately designated subdivision:

( ) Ninety (90) days from the date of filing a claim for refund in the case of a taxpayer who is a debtor as defined in § 67-1-1808.

SECTION 4. Tennessee Code Annotated, Section 67-1-1707, is amended by adding the following as a new, appropriately designated subsection:

( ) The commissioner shall, without written request, provide tax information to officers or employees of a claimant as defined in § 67-1-1808, if such tax information is necessary to accomplish and effectuate the purposes of § 67-1-1808. No officer or employee who receives tax information under this subsection shall disclose such information to any person other than the person to whom it relates, except as otherwise may be authorized by law.

SECTION 5. Tennessee Code Annotated, Section 67-1-1802, is amended by designating existing subdivision (a)(1) as subdivision (a)(1)(A), and further amended by adding the following language as a new subdivision (a)(1)(B):

(a)(1)(B)

(i) Any taxpayer requesting a refund in the amount of two hundred dollars (\$200.00) or more shall complete and submit a written report of debts owed to a claimant as defined in § 67-1-1808 on a form prescribed by the commissioner to accompany the claim for refund. If a debt is reported and if the claim for refund is approved, any or all of the refund amount shall be subject to offset to recover the amount of such debt, subject to the requirements of § 67-1-1808. Any person who, with intent to deceive, provides false information on such report commits the Class A misdemeanor offense of perjury pursuant to § 39-16-702. Such report shall state whether or not such person owes or does not owe any of the following debts as of the date of the claim:

(a) State tax liabilities;

- (b) Child support;
- (c) Overpayment of unemployment compensation benefits;
- (d) Overpayment of medical assistance benefits owed the bureau of TennCare;
- (e) Student loan or other obligation due to the Tennessee student assistance corporation;
- (f) Fees, costs or restitution owed to a clerk who serves a court of criminal jurisdiction;
- (g) Costs of incarceration;
- (h) Judgments or liens in favor of a state agency, department, commission, or bureau;
- (i) All other debts owed to any other claimant.

(ii) Each of the debts in subdivision (a)(1)(B)(i) that are listed in the report shall be preceded by the words "Yes" and "No" and a taxpayer shall make a cross mark (X) or other similar mark opposite the debt the taxpayer owes or does not owe. If a taxpayer marks "Yes" for any such debt, the taxpayer shall attach documentation identifying the claimant to whom the debt is owed and the outstanding balance of the debt. The report shall clearly state in bold face type that a person who, with intent to deceive, provides false information on the report is guilty of the Class A misdemeanor offense of perjury. The report required by this subdivision (a)(1)(B) shall be made on a paper writing in substantially the following form:

### **REPORT OF DEBTS**

Pursuant to Tennessee Code Annotated Sections 67-1-1802 and 67-1-1808, if you are seeking a refund of \$200.00 or more you are required to complete and attach this report to your claim for refund. Make a "X" in the "Yes" box if you owe any of the debts listed below to any state agency, department, bureau, commission or other state authority ("claimant").

For each debt that you report, attach documentation identifying the claimant to whom you owe the debt and the outstanding balance of such debt as of the date you submit the refund claim. If your refund claim is approved, any or all of your refund payment will be subject to offset and reduced by the amount of any debt owed.

If you do not owe any of the debts listed below to a claimant, make a "X" in the "No" box. After completion, please read the paragraphs below and provide a signature and date on the lines provided.

**Any person who, with intent to deceive, provides false information on this report is guilty of the Class A misdemeanor offense of perjury.**

Yes \_\_\_ No \_\_\_ State tax liabilities;

Yes \_\_\_ No \_\_\_ Child support;

Yes \_\_\_ No \_\_\_ Overpayment of unemployment compensation benefits;

Yes \_\_\_ No \_\_\_ Overpayment of medical assistance benefits owed the bureau of TennCare;

Yes \_\_\_ No \_\_\_ Student loan or other obligation due to the Tennessee student assistance corporation;

Yes \_\_\_ No \_\_\_ Fees, costs or restitution owed to a clerk who serves a court of criminal jurisdiction;

Yes \_\_\_ No \_\_\_ Costs of incarceration;

Yes \_\_\_ No \_\_\_ Judgments or liens in favor of a state agency, department, commission, or bureau;

Yes \_\_\_ No \_\_\_ Any other debt owed to any other claimant.

**I certify that the foregoing report is true and correct to the best of my knowledge and understanding. I further acknowledge that providing false information on this report constitutes the offense of perjury under Tennessee Code Annotated Section 39-16-702 and is punishable under the laws of the state of Tennessee.**

Signature of Taxpayer, Officer or Authorized Representative:

\_\_\_\_\_

Date: \_\_\_\_\_

SECTION 6. Tennessee Code Annotated, Section 67-1-1802(c)(1)(C), is amended by deleting the subdivision in its entirety and by substituting instead the following language:

(C) The chancery court shall conduct a de novo trial of the suit; provided that, the court shall have no jurisdiction in cases in which the issue is the existence, continued existence, or amount of a debt set off against a tax refund. The remedies established in § 67-1-1808 are a taxpayer's sole and exclusive remedies to challenge the existence, continued existence, or amount of a debt set off against a tax refund.

SECTION 7. Tennessee Code Annotated, Title 67, Chapter 1, Part 18, is amended by adding the following as a new section:

Section 67-1-1808.

(a) As used in this section, unless the context otherwise requires:

(1) "Claimant" means any state agency, department, board, bureau, commission, or authority to which a taxpayer owes any debt listed in subsection (d) or that acts on behalf of an person to collect such debt. Such term may also include a clerk who serves a court of criminal jurisdiction, if the clerk has determined to participate in the offset provisions of this section;

(2) "Debt" means any money, unpaid account, or sum due and owing any claimant by a taxpayer, or any money, unpaid account, or sum that is due and owing any person and is legally enforceable by the claimant;

(3) "Debtor" means an person owing a debt to a claimant and who files a claim for a tax refund, subject to the further requirements of this section;

(4) "Offset" or "set off" means the application of all or part of a taxpayer's refund of taxes to pay a taxpayer's debt owed to a claimant; and

(5) "Person" or "taxpayer" means every individual, firm, partnership, joint venture, association, corporation, limited liability company, cooperative, trust, regulated investment company, receiver, and syndicate.

(b) Whenever a taxpayer has, on the date of payment, paid taxes in error or paid taxes against any statute, rule, regulation or clause of the constitution of the state or of the United States, and is due a refund pursuant to this part, and the taxpayer reports to be a debtor in the manner provided by § 67-1-1802(a)(1)(B)(ii), the commissioner shall offset the taxpayer's refund of taxes by the amount of the debt as provided in this section.

(c) This section shall apply to any claim for refund of state taxes filed by any taxpayer in the amount of two hundred dollars (\$200.00) or more. A tax refund shall not be offset to pay the debt of any person who is not the taxpayer due the refund. Whenever a claim for refund is filed by two (2) or more persons, who were jointly and severally liable for the taxes paid, the entire refund amount shall be subject to offset to pay the debt or debts of one (1) or more of the taxpayers.

(d) The following debts shall be used to offset a refund of taxes:

(1) State tax liabilities due pursuant to this title;

(2) Child support due pursuant to title 36, chapters 2, 5, or 6, or pursuant to title 37, chapter 1;

(3) Amounts owed to the unemployment compensation fund pursuant to title 50, chapter 7;

(4) Obligations owing to the bureau of TennCare for overpayment of medical assistance benefits pursuant to title 71, chapter 5;

(5) Student loan or other obligation due to the Tennessee student assistance corporation pursuant to title 49, chapter 4;

(6) Fees, costs or restitution collected by a clerk who serves a court of criminal jurisdiction, if reported pursuant to subsection (f);

(7) Costs of incarceration due pursuant to title 41, chapter 21, part 9;

(8) Judgments and liens in favor of a claimant; and

(9) All other debts owed to any other claimant.

(e) In the event that a taxpayer owes debts to several claimants, priority of set off against any refund shall be as follows:

(1) State tax liabilities;

(2) Child support;

(3) Judgments and liens in favor of a claimant in order of the date entered or perfected; and

(4) All other debts owed to any other claimant in the order in which the debt was incurred.

(f)

(1) When a taxpayer reports that any debt is owed to a claimant in the manner provided by § 67-1-1802(a)(1)(B)(ii), and if the commissioner determines such taxpayer is entitled to a refund, then the commissioner shall notify the treasurer and each claimant identified in the documentation accompanying the claim for refund of the department's intent to issue a refund. Such notification shall also include:

(A) The name and address of the taxpayer;

(B) The original tax refund amount;

(C) The proposed offset amount; and

(D) The proposed net tax refund amount.

(2) The notification to the treasurer may include any other information that would assist the treasurer in determining whether the taxpayer may be the owner of unclaimed property held in trust on the owner's behalf. Following receipt of the notification, the treasurer shall verify to the department whether or not the taxpayer is the owner of unclaimed property. The amount of the debt owing to a claimant shall be set off against the amount of the unclaimed property otherwise due the taxpayer.

(3) Following receipt of the notification provided in subdivision (f)(1) and prior to an offset of a tax refund, a claimant shall provide written notice to the debtor, and to the commissioner of revenue, of the claimant's intent to set off all or part of the tax refund to pay the debt. Such notice shall set forth the:

(A) Original tax refund amount;

(B) Proposed offset amount;

(C) Proposed net tax refund amount;

(D) Basis for a claim to the debt and set off;

(E) Taxpayer's right to appeal the proposed offset as provided in subsection (g); and

(F) A toll-free telephone number or other contact information which the debtor may use in obtaining information from the claimant concerning the debt and the proposed offset action.

(g)

(1)

(A) If any debt has been previously determined to exist and to be due and owing as a result of a final order issued pursuant to title 4, chapter 5, or a judgment entered by any court of record,



then a debtor shall be afforded an opportunity for a hearing to determine the continued existence of the debt and whether it remains outstanding. No hearing shall be conducted as provided in this subdivision unless the time limits for appealing any prior final order or judgment have expired as provided by law.

(B) Any debtor who desires a hearing shall submit to the department of revenue a written request for a hearing within twenty (20) days of receipt of the notice provided in subdivision (f)(3). If a hearing is requested, then it shall be held by the commissioner of revenue or the commissioner's designee as provided in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner may request that an administrative judge or hearing officer employed in the office of the secretary of state conduct the hearing as provided in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(2)

(A) If any debt has not been determined to exist, or to be due and owing as a result of a prior final order or judgment, as provided in subdivision (g)(1)(A), then a debtor shall be afforded an opportunity for a hearing, in accordance with subdivision (g)(2)(B), to determine the existence of the debt, and if so, whether the claimed debt asserted as due and owing is correct.

(B) Any debtor who desires a hearing shall submit to the claimant a written request for a hearing within twenty (20) days of receipt of the notice provided in subdivision (f)(3). The claimant shall notify the department of revenue as to whether the taxpayer filed a timely request for hearing upon the expiration of the twenty-

day period for filing such request or receipt of a request for a hearing. If a hearing is requested, then it shall be held by the claimant or the claimant's designee as provided in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. If the amount due is incorrect, a proper adjustment shall be made.

After entry of a final order following any hearing, the claimant shall send a copy of the final order to the commissioner of revenue.

(3) All final orders issued pursuant to title 4, chapter 5, as provided in subdivision (g)(1) or (2), shall set forth the amount owed by the taxpayer to the claimant that is subject to set off.

(h)

(1) The commissioner of revenue shall set off the appropriate amount of a debt against the tax refund if a taxpayer fails to file a timely request for a hearing, or upon receipt of a final order, or as soon thereafter as practicable. Any portion of a tax refund remaining after the offset shall be refunded or credited to a taxpayer, as requested in the claim for refund. The commissioner shall ensure that the appropriate amount of the refund subject to set off is used to satisfy any debts owed by the taxpayer.

(2) The commissioner of revenue shall notify the taxpayer in writing and provide an accounting of the action taken on any refund whenever the commissioner sets off a taxpayer's refund pursuant to this section.

(3) The commissioner of revenue may require a claimant to pay a fee to reimburse the department of revenue's costs of collecting the debt on behalf of a claimant; provided, that the fee shall not exceed five dollars (\$5.00) per offset action.

(i)

(1) On an annual basis, the department of revenue shall submit to the following claimants a list of taxpayers for the previous year who filed claims for refunds and received such refunds in the amount of \$200.00 or more and for which no debts were reported in accordance with § 67-1-1802(a)(1)(B)(i):

- (A) Department of human services;
- (B) Department of labor and workforce development;
- (C) Bureau of TennCare;
- (D) Tennessee student assistance corporation;
- (E) Administrative office of the courts; and
- (F) Attorney general and reporter.

(2) If any such claimant receiving such list has information in its records verifying that a named taxpayer owed a debt as of the date of the claim for refund, such claimant shall notify the department of revenue of the name of the debtor, the amount of the debt, and the date on which the debt was incurred. The clerk who serves a court of criminal jurisdiction shall notify the department if the clerk has determined to participate in the offset provisions of this section. Notwithstanding any other law to the contrary, the department of revenue shall make an assessment against the taxpayer to recover the amount of the debt that would have otherwise been offset against the refund payment. The procedures established in subsection (g) to challenge a proposed offset shall be the sole and exclusive remedies for challenging an assessment made pursuant to this subsection; provided, that the debtor is provided information in the notice of assessment about the procedures for challenging such assessment and the twenty-day period for requesting a hearing shall begin from the date of the notice of assessment. Nothing in this section shall require any

state agency or its employees or officers to violate strict standards of confidentiality set forth in applicable federal or state law or regulations.

(j) Notwithstanding title 67, chapter 1, part 17, or any other provision of law prohibiting disclosure of a taxpayer's identity or tax information, all information exchanged among the department of revenue, the department of treasury, and any claimant necessary to accomplish the purpose of this section is lawful.

(k) The comptroller of the treasury shall undertake a performance audit of the implementation and enforcement of this act by the department of revenue commencing two (2) years after the effective date of this act. The comptroller of the treasury shall assess the effectiveness of the act including, but not limited to, the efficiency of the administrative procedures established for notice and hearing of appeals and the amount of revenue recovered relative to the cost of implementation and maintenance. On or before January 15, 2013, the comptroller of the treasury shall report the comptroller's findings and recommendations to the finance, ways, and means committees and the government operations committees of the senate and the house of representatives.

SECTION 8. Any claimant may promulgate rules to effectuate the provisions of this act relating to internal procedures for reporting debts and conducting administrative hearings. The department of revenue may promulgate such other rules to carry out the remaining provisions of this act.

SECTION 9. This act shall take effect on becoming a law, the public welfare requiring it, and shall apply to any claim for refund filed with the department of revenue on or after July 1, 2009, that has not been finally determined.